



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 529

IN THE MATTER OF ANGELO M. SCACCIA

Appearances: David A. Wilson, Esq.
Counsel for Petitioner

Paul W. Shaw, Esq.
Counsel for Respondent

Commissioners: Brown, Ch., Burnes, Larkin and Rapacki^{1/}

Presiding Officer: Commissioner George D. Brown, Esq.

DECISION AND ORDER

I. Procedural History

On June 20, 1995, the Petitioner initiated these proceedings by issuing an Order To Show Cause ("OTSC") pursuant to the Commission's Rules of Practice and Procedure. 930 CMR §§ 1.01(1)(a) *et seq.* The OTSC alleged, among other things, that Angelo M. Scaccia ("Scaccia") violated G.L. c. 268A, §3(b) by accepting: free meals and golf from Theodore Lattanzio ("Lattanzio"), a registered legislative agent for Philip Morris USA ("Philip Morris"); free golf on two occasions from F. William Sawyer ("Sawyer"), a registered legislative agent for John Hancock Mutual Life Insurance Company ("Hancock"); a free meal from William Carroll ("Carroll"), a registered legislative agent for the Life Insurance Association of Massachusetts, Inc. ("LIAM"); and a free meal from Richard McDonough ("McDonough"), a registered legislative agent for Anheuser-Busch Companies, Inc. ("Anheuser-Busch"), among other organizations. The Petitioner further alleged that Scaccia violated G.L. c. 268A, §23(b)(3) by knowingly, or with reason to know, receiving each of these gratuities^{2/} and taking subsequent actions as a legislator. According to the Petitioner, Scaccia acted in a manner that would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that these legislative agents could improperly influence or unduly enjoy his favor in the performance of his official duties, or that Scaccia was likely to act or fail to act as a result of undue influence of these legislative agents. Additionally, the Petitioner alleged that Scaccia violated G.L. c. 268B, §6 on three occasions by knowingly and willfully accepting from legislative agents gifts aggregating \$100 or more in a calendar year. Finally, the Petitioner alleged that Scaccia violated G.L. c. 268B, §7 on two occasions by filing false Statements of Financial Interests ("SFI"). He failed to disclose his receipt of gratuities aggregating over \$100 from Lattanzio on his SFI for calendar year 1991 and failed to disclose his receipt of gratuities aggregating over \$100 from Sawyer and Carroll on his SFI for calendar year 1993.

On June 27, 1995, Scaccia filed an Answer in which he admitted that he is a Massachusetts State Representative and that he was House chairman of the Joint Committee on Taxation from 1991 through 1993. He admitted that he attended a Council of State Governments conference in Hauppauge, New York on July 30, 1991 and that he attended a Conference of Insurance Legislators in Amelia Island, Florida on March 11 and 12, 1993. Scaccia denied all of the other allegations in the OTSC and asserted the following affirmative defenses: that the OTSC failed to state a claim upon which relief can be granted, and that the Respondent's 1991 conduct is beyond the statute of limitations.

Pre-hearing conferences were held on July 26, 1995, September 11, 1995 and October 16, 1995. At those conferences, issues surrounding discovery were discussed and Commissioner George Brown, as the presiding officer, addressed scheduling and management of the hearing.

On July 21, 1995, Scaccia filed a Motion for Judgment On the Pleadings. He filed a substitute motion on August 4, 1995. On October 2, 1995 Commissioner Brown entered an Order denying without prejudice the Motion For Judgment on the Pleadings and permitting it to be renewed before the full Commission at the end of the adjudicatory hearing. In his adjudicatory hearing brief, the Respondent has raised all of the issues originally addressed in the previously filed Motion For Judgment On the Pleadings.

To protect information subject to the confidentiality provisions of G.L. c. 268B, §4 from disclosure at the hearing, the parties drafted a confidentiality agreement. On October 20, 1995, Commissioner Brown incorporated this agreement into a Protective Order.

Evidentiary hearings were held on eleven days: October 25, 26, and 27, November 1, 3, 13, and 29, December 1, 6, 1995, January 23, and February 15, 1996. During discovery and throughout the adjudicatory hearing, Scaccia invoked his state and federal privileges against self-incrimination.^{3/} The Petitioner asked the Respondent a substantial number of questions on the record, to which Respondent's invocation of privilege was stipulated through his legal counsel.

After the conclusion of the evidentiary portion of the hearing, on June 14, 1996, the parties submitted legal briefs. 930 CMR 1.01(9)(k). The parties also presented their closing arguments before the full Commission on August 6, 1996. 930 CMR § 1.01(9)(e)(5). Deliberations began in executive session on that date. G.L. c. 268B, §4(i); 930 CMR § 1.01(9)(m)(1).

In rendering this Decision and Order, each undersigned member of the Commission has considered the testimony, evidence and argument of the parties, including the hearing transcript.^{4/}

II. Findings of Fact

Angelo M. Scaccia

1. Scaccia is, and at all times relevant to this proceeding, has been a Massachusetts state representative from the Hyde Park-Readville area of Boston.

2. Sandra Scaccia is Scaccia's wife. From 1991 through 1994, Michael Scaccia, Scaccia's son, was a dependent resident of Scaccia's household.

3. As a state representative, Scaccia is compensated as provided in G.L. c. 3, §9, which does not provide that state representatives are entitled to receive free meals or golf from private parties as part of their compensation package. Moreover, the receipt of free meals or golf by legislators is not authorized by law for the proper discharge of their official duties.

4. As a state representative during 1991, 1992 and 1993, Scaccia participated in hearings and debates concerning proposed legislation and drafted, filed and voted on proposed legislation.

5. From 1991 through 1993, Scaccia served as House chairman of the Joint Committee on Taxation ("Committee").

6. The Committee, which has primary responsibility for proposed legislation which relates to taxation, holds hearings and takes written and oral testimony.

7. Chairmen of the Legislature's committees have extensive power over the fate of legislation. In particular, chairmen can schedule hearings and play a key role in a committee's decision to advance or not advance bills to the full General Court.

8. As a state representative and as a member and House chairman of the Committee, Scaccia voted on and

took other official action between 1991 and 1993 concerning proposed legislation relating to the tobacco, alcoholic beverages, and insurance industries.

9. Scaccia attended a Council of State Governments (“CSG”) conference in Hauppauge, New York from July 28 through August 1, 1991 with his wife, Sandra, and son, Michael. The Council of State Government holds periodic conferences to bring elected officials and private sector organizations together to discuss matters affecting their common interests.

10. Scaccia’s campaign committee paid \$1075.65 of Scaccia’s expenses for attending the Hauppauge CSG conference of which \$914.95 was for accommodations, \$64.50 for meals, \$90.20 for gasoline and \$6.00 for tolls. There is no evidence that the Committee paid for Scaccia’s golf at Hauppauge during his July, 1991 stay.

11. Scaccia attended a National Conference of Insurance Legislators (“NCOIL”) conference at Amelia Island Plantation Resort (“Resort”) in Amelia Island, Florida from March 12 through 14, 1993. The conference was designed to bring state legislators from around the United States together to be educated about issues that affected the insurance industry. Scaccia arrived at the Resort on March 9, 1993.

12. Scaccia’s son, Michael, arrived at Amelia Island on or before Wednesday, March 10, 1993.^{5/}

13. Scaccia’s campaign committee paid \$1,422.50 of his expenses at Amelia Island of which \$384.50 was for airfare, \$972.00 was for lodging and \$66.00 was for transportation to the airport. There is no evidence that the Committee paid for Scaccia’s meals and golf at Amelia Island during his March, 1993 stay.

Theodore Lattanzio/Philip Morris

14. In 1991, Lattanzio was employed by Philip Morris as a registered legislative agent. Lattanzio was Philip Morris’ Regional Director of Government Affairs for the New England region through July 1991. Lattanzio’s responsibilities in that position included monitoring legislation in Massachusetts relative to Philip Morris’ interests and supervising and directing the activities of William Delaney, Sr. and William Delaney, Jr., Massachusetts registered legislative agents under contract with Philip Morris to lobby on its behalf in Massachusetts.

15. Philip Morris sells tobacco products in Massachusetts subject to state regulation and taxation. Through its Miller Brewing Company (“Miller”), Philip Morris sells alcoholic beverages in Massachusetts subject to state regulation and taxation.

16. Lattanzio first met Scaccia in 1990 at the Eastern Regional Conference in Manchester, New Hampshire when Lattanzio was serving as Philip Morris’ Regional Director for the New England Region, a position in which he monitored legislation in the six New England states relative to Philip Morris’ interests. At the 1990 Eastern Regional Conference, Lattanzio incurred a business expense relative to Scaccia.^{6/} Lattanzio and Scaccia were not personal friends.

17. Lattanzio was present at the July, 1991 CSG conference to represent Philip Morris. Philip Morris was additionally represented at that conference by Massachusetts lobbyist Delaney, Sr., as well as others.

18. On July 29, 1991, Scaccia, his wife and his son had dinner with Lattanzio. According to Lattanzio’s business records, eleven people were present at this dinner, all of whom were either lobbyists for Philip Morris (or its subsidiary, Miller) or state legislators from New England states and their family members.

19. The July 29 dinner was not a CSG conference event.

20. Lattanzio paid for the July 29, 1991 dinner (for eleven people), the cost of which totalled \$645.00.^{7/}

The per person cost of the July 29 dinner was \$58.63 and the amount attributable to Scaccia, his wife and his son was \$175.89. The record contains no evidence that Scaccia paid for his own dinner or those of his wife and son on July 29, 1991.

21. Lattanzio invited a group of people to play golf on July 30, 1991. Lattanzio handed out golf cart keys to the participants. Of the nineteen golfers on July 30, 1991, five were tobacco company lobbyists (three representing

Philip Morris), twelve were state legislators from Lattanzio's New England Region (and their family members) and two were lobbyists for Massachusetts non-tobacco business interests. Five of the nineteen individuals who golfed on July 30, 1991 (including Scaccia and his son) had attended the dinner Lattanzio hosted the night before.

22. The July 30 golf outing was not a CSG conference event.

23. Lattanzio paid for Scaccia and his son, Michael, as well as seventeen others (including himself), to play golf on July 30, 1991 at a total cost of \$1,068.13.^{8/} The cost per person of the July 30 golf was \$56.21 per person and the amount attributable to Scaccia and his son totalled \$112.42. The record contains no evidence that Scaccia paid for his own and his son's golf on July 30, 1991.

24. Lattanzio reported the cost of the July 29, 1991 dinner and of the July 30, 1991 golf to Philip Morris as a business expense. Philip Morris reimbursed Lattanzio for business-related expenses.^{9/}

25. The following bills relating to the tobacco and alcoholic beverages industries were pending before the Committee in 1991: H. 1127, An Act Relative To The Sales Of Tobacco Products and Alcoholic Beverages; H.1835, An Act To Increase The Excise Tax Imposed By The Sale Of Cigarettes; H. 3161, An Act To Restrict Cigarette Sales in Vending Machines; H. 4084, An Act Relative To The Taxation of Cigarettes; H. 4823, An Act Further Regulating The Cigarette Tax. On February 27, 1991, the Committee, with Scaccia as chairman, held public hearings on the following bills concerning tobacco products: H.1290, An Act To Prohibit the Sale of Tobacco Products In Certain Health Care Facilities and Pharmacies; H. 1293, H. 2215, An Act To Increase The Fee For Licensing Cigarette Vending Machines; and H. 3161, An Act To Prohibit The Sale of Tobacco Products In Certain Health Care Facilities And Pharmacies. (Exhibit P-56). In November 1991, Scaccia voted as a House member on proposed amendments to H. 6280, An Act To Improve Health Care Access and Financing, which contained an increase in the cigarette tax and against which the tobacco interests lobbied. Tobacco related bills before the Committee in 1992 included: H. 1037, An Act To Prohibit The Sale Of Individual Cigarettes; H. 1234, An Act To Increase The Excise Tax Imposed By The Sale Of Cigarettes; H. 2751, An Act Relative To The Taxation Of Cigarettes; and H. 3823, An Act Relative To Health And Tobacco.

F. William Sawyer/John Hancock

26. In 1993, Sawyer was employed by Hancock as a senior registered legislative agent in Massachusetts. In that capacity, Sawyer sought to influence legislators in relation to legislation affecting Hancock's business and to advocate for the passage of bills which advanced Hancock's interests. In 1993, Sawyer was generally known to Massachusetts legislators as a Hancock representative because of his appearances on behalf of Hancock at the State House. The record contains no evidence of a personal friendship between Sawyer and Scaccia.

27. Hancock is a Massachusetts-based insurance company whose business activities are taxed and regulated by the Commonwealth.

28. On March 11, 1993, Scaccia played golf at the Amelia Island Golf Links with Sawyer and Massachusetts State Representatives Thomas P. Walsh (T. Walsh) and William Cass (Cass). In 1993, T. Walsh was the House vice-chairman of the Committee. At that time, Cass was a member of both the Committee and the Joint Health Care Committee.

29. The March 11 golf outing was not a NCOIL conference event as the conference did not begin until March 12th and no golf outings were scheduled as part of the conference.

30. Sawyer paid for Scaccia and three others (including himself) to play golf on March 11, 1993 at a total cost of \$360.40.^{10/} The cost per person of the March 11 golf outing was \$90.10. T. Walsh and Cass did not pay for their own golf or that of anyone else. The record contains no evidence that Scaccia paid for his own golf on March 11, 1993.

31. Hancock reimbursed Sawyer for the cost of the March 11, 1993 golf as a business expense.^{11/}

32. On March 12, 1993, Sawyer drove Scaccia, his son, Michael, and Cass to the Tournament Players Club Sawgrass golf club ("TPC Sawgrass") at Ponte Vedra Beach, Florida. At TPC Sawgrass, Scaccia golfed in a

threesome with Sawyer and Massachusetts State Representative Honan, then House vice-chairman of the Government Regulations Committee and member of the Health Care Committee. Honan was not registered for the NCOIL conference. Scaccia and Sawyer shared a golf cart while Michael golfed with Cass.

33. The March 12 golf outing was not a NCOIL conference event.

34. Sawyer paid for Scaccia and three others (including himself) to golf on March 12, 1993 at a total cost of \$415.52.^{12/} The cost per person of the March 12 golf outing was \$103.88 per person. Neither Honan, nor Cass paid for his own or anyone else's golf on March 12, 1993. The record contains no evidence that Scaccia paid for his own or his son's golf on March 12, 1993.

35. Hancock reimbursed Sawyer for the cost of the March 12, 1993 golf outing as a business expense.^{13/}

36. In 1993, Scaccia, as a state representative sponsored or co-sponsored several bills relating to the insurance industry: H. 3030, An Act Relative to the Restructuring of the Automobile Insurance System; H. 3777, An Act Relative to Mental Health Benefits; H. 3778, An Act Relative to Insurance Information and Privacy; and H. 3779, An Act to Improve Access to Rehabilitation Services.

William Carroll/LIAM

37. In 1993, Carroll was employed by LIAM as its president, chief executive officer, and registered legislative agent in Massachusetts. Carroll has been employed by LIAM since 1985.

38. LIAM is a trade association of Massachusetts-based commercial life, health and disability insurers. Among LIAM's purposes are collective information gathering and collective advocacy concerning legislative and regulatory issues of interest to LIAM's members. Hancock was a LIAM member in 1993. The insurance business activities of LIAM's members are taxed and regulated by the Commonwealth.

39. In 1993, Scaccia knew Carroll and that he was a legislative agent for LIAM. Carroll had appeared before and submitted written testimony to the Committee chaired by Scaccia prior to March 12, 1993. Carroll and Scaccia were not personal friends.

40. On March 12, 1993, Sawyer drove Scaccia, his son Michael, T. Walsh and his wife, Honan and his guest and Sawyer's wife, in Sawyer's rental van from the Amelia Island Plantation approximately two miles to the Ritz-Carlton Hotel ("the Ritz"). Scaccia and his son had dinner with Sawyer and others at the Ritz restaurant, The Grill.^{14/} There were a total of 24 persons at the Ritz dinner all of whom were either Massachusetts legislators (and their guests) or representatives of businesses with an interest in Massachusetts insurance legislation. All of the private sector diners were insurance industry lobbyists with the exception of Francis Carroll with whom William Carroll had worked on insurance issues.

41. The March 12, 1993 Ritz dinner was not an official event of the NCOIL conference. The only scheduled conference event on the evening of March 12th was a 6:00 p.m. to 7:30 p.m. reception at the Amelia Island Plantation Executive Conference Center.

42. Scaccia does not drink alcohol and in 1993 Scaccia's son Michael was 19 years old.

43. At the end of the March 12, 1993 dinner, Carroll paid for the dinner (for 24 people) which totalled \$3,089.16.^{15/} Deducting from this total, the portion attributable to alcoholic beverages, the cost of the dinner (for 24 people) was \$1,417.19. The cost per person of the March 12 dinner was therefore \$59.04 and the amount attributable to Scaccia and his son was \$118.08. The record contains no evidence that Scaccia paid his own or his son's dinner on March 12, 1993.

44. LIAM reimbursed Carroll for the March 12, 1993 dinner as a business expense.^{16/}

45. Scaccia had been told that the March 12, 1993 Ritz dinner function was sponsored by Carroll and several lobbyists.^{17/}

46. Prior to and during 1993, LIAM, through its agents, engaged in lobbying activities regarding how insurance is taxed in the Commonwealth. In 1993 and in prior years, Carroll had dealings with Scaccia as House chairman of the Committee, including corresponding with him and personally giving testimony before the Committee. By letter dated March 30, 1993, addressed to Scaccia and Senator William Keating, as Joint Taxation Committee chairs, Carroll filed written testimony on behalf of LIAM supporting H. 4434, An Act Reforming The Taxation Of Domestic Life Insurance Companies, which would repeal the state net investment income tax. This bill was heard by Scaccia's Committee on March 24, 1993. In 1992, LIAM's then eight members paid \$22.2 million to the Commonwealth in net investment income taxes. In addition, by two letters, each dated March 31, 1992, and addressed to Scaccia and Keating, Carroll submitted testimony supporting H. 3466, An Act Reforming the Taxation of Domestic Life Insurance Companies, a 1992 bill repealing the state net investment income tax, and opposing H. 2378, 2568, Acts Relative to Bank Taxation and Competitive Equality, and H. 2912, An Act Relative to the Taxation of Banks and Bank-like Entities.

47. House 53, An Act Further Regulating Insurance, was the National Association of Insurance Commissioners ("NAIC") accreditation bill and was regarded by LIAM and its members (including Hancock), as important to insuring their nationwide competitiveness. The Insurance Committee held a public hearing on H. 53 on March 22, 1993. Carroll testified in favor of H. 53 at that public hearing. Although LIAM supported H. 53, Carroll sought changes before its passage, including changes to its extraordinary dividends language. Some of these changes were sought by LIAM in the Insurance Committee itself and others in the Committee on Bills in Third Reading. In a closely related matter, in March 1993, LIAM sought changes to the funding of the state Insurance Commission in the House Ways and Means Committee. On June 16, 1993, the Insurance Committee reported out favorably an amended version of H. 53 (H. 5220) to the House Ways and Means Committee. The full House subsequently voted on H. 53.

Richard McDonough/Anheuser-Busch

48. In 1993, McDonough was employed as a registered legislative agent and lobbyist by Anheuser-Busch, the Association of the Magistrates & Assistant Clerks Magistrate of the Trial Courts of the Commonwealth ("Magistrates Association") and Massachusetts Fine Art Auctioneers, Inc. ("Auctioneers, Inc.").

49. Anheuser-Busch produces alcoholic beverages which are sold in Massachusetts and, therefore, are subject to state regulation and taxation. The Magistrates Association represents the interests of the magistrates and assistant clerks of the Commonwealth's trial courts and the assistant registers of probate of the Commonwealth's trial courts. Auctioneers, Inc. serves as a coordinating group for auction and appraisal houses in Massachusetts and lobbies with regard to Massachusetts legislation concerning the auction and appraisal profession.

50. McDonough sometimes visited the State House office of the Committee while Scaccia was House chairman thereof. The record contains no evidence of a personal friendship between McDonough and Scaccia.

51. On March 11, 1993, Scaccia and his son, Michael, had dinner with McDonough at the Amelia Inn restaurant.^{18/} Also present were McDonough's wife, Cass, and Massachusetts State Representative DiMasi and his wife. DiMasi was not registered for the NCOIL conference. DiMasi has a close personal friendship with both Scaccia and McDonough.^{19/} All seven diners at the March 11, 1993 dinner were from Massachusetts, including the three legislators (Scaccia, Cass and DiMasi) and the one lobbyist, McDonough.

52. The March 11, 1993 dinner was not a NCOIL conference event as the conference did not begin until March 12th.

53. Prior to the conclusion of the March 11, 1993 dinner, McDonough left the Amelia Inn to pick up Senator Havern's wife at the airport. At the conclusion of the meal, DiMasi asked the waiter for the check and was told that the dinner had been charged to McDonough's room number. DiMasi thereafter informed Scaccia that the waiter had charged the March 11 dinner to McDonough's tab. In response to Scaccia's question of whether McDonough was coming back, DiMasi said "[n]o he isn't, but don't worry about it, Angelo, I'll take care of it".^{20/}

54. McDonough paid for the March 11, 1993 Amelia Inn dinner,^{21/} the cost of which (for seven people) totalled \$343.79.^{22/} The cost per person of the March 11 dinner was \$49.11, and the amount attributable to Scaccia and his son was \$98.22. The record contains no evidence that Scaccia paid for his own or his son's meal

at the March 11 dinner.

55. In 1993, proposed legislation relating to the sale of alcoholic beverages in Massachusetts was pending before the Committee: H. 3678, An Act Imposing a Tax on Alcoholic Beverages for the Operation of Health Care Facilities. In addition, in 1993, by Scaccia's own petition, H. 3364, An Act Relative to the Granting of Licenses for the Sale of Alcoholic Beverages was before the Government Regulations Committee. In 1993, Scaccia also filed a bill affecting the interests of Massachusetts auctioneers, H. 2952, An Act Further Regulating the Conduct of Auctioneers, and co-sponsored three bills affecting the Massachusetts trial court: H. 3781, An Act Relative to the Appointment of Family Service Officers in the Probate and Family Court Department; H. 3785, An Act Authorizing Payment for Accumulated Sick and Vacation to Retiring Justices of the Trial Court; and H. 3789, An Act to Provide Indemnification to Members of the Judiciary.

Scaccia's Statements of Financial Interests

56. On May 19, 1992, Scaccia filed or caused to have filed with the Commission his SFI for calendar year 1991. Scaccia's 1991 SFI was completely filled out, contained responses to each of the SFI's sections and questions, and was not, on its face, deficient. The 1991 SFI was signed by Scaccia and dated May 7, 1992. Scaccia did not, however, report his and his immediate family members' receipt in July 1991 of gifts of free meals and golf from lobbyist Lattanzio and Philip Morris.

57. On May 17, 1994, Scaccia filed or caused to be filed with the Commission his SFI for calendar year 1993. Scaccia's 1993 SFI was completely filled out, contained responses to each of the SFI's sections and questions, and was not, on its face, deficient. The 1993 SFI was signed by Scaccia and dated May 16, 1994. Scaccia did not, however, report his and his son's receipt in Florida in March 1993 of gifts of free meals and golf from lobbyists Sawyer, McDonough and Carroll and their respective employers and principals.

III. Decision

The Petitioner has alleged that Scaccia violated G.L. c. 268A, §'3(b) and 23(b)(3) as well as §'6 and 7 of G.L. c. 268B. At all times relevant, Scaccia has been a member of the General Court. Thus, Scaccia is a state employee within the meaning of G.L. c. 268A,^{23/} and is a public official required to file a Statement of Financial Interest under G.L. c. 268B, §5.^{24/}

A. Statute of Limitations

As a preliminary matter, we must decide whether the charges against Scaccia in relation to the 1991 Hauppauge, New York conference are time barred.^{25/} The Ethics Commission has, by regulation, established a statute of limitations to be applied to Commission proceedings.^{26/}

Under 930 CMR § 1.02(10), an order to show cause must be issued within three years after a disinterested person learned of the violation. When a statute of limitations defense is asserted, the Petitioner has the burden of showing that a disinterested person learned of the violation no more than three (3) years before the order was issued. The Petitioner may satisfy its burden by obtaining affidavits from the Department of the Attorney General, the Office of the District Attorney, and from the Commission investigator assigned to the case stating that no complaint relating to the violation was received more than three (3) years before the OTSC was issued. With respect to any violation of G.L. c. 268A, §23 an affidavit from the Respondent's public agency that the agency has reviewed its files and the agency was not aware of any complaint relating to the violation more than three (3) years before the order was issued satisfies the Petitioner's burden. If the Petitioner meets his burden under 930 CMR § 1.02(10)(c), the Respondent will prevail on his statute of limitations defense only if he shows that more than three (3) years before the order was issued, the relevant events were either a matter of general knowledge in the community, or the subject of a complaint to the Ethics Commission, the Department of the Attorney General, the appropriate Office of the District Attorney, or, with respect to a §23 violation only, the Respondent's public agency.

In this case, the OTSC was issued and filed on June 20, 1995. The alleged conduct took place on July 29 and July 30, 1991, almost four years before the OTSC issued. The Petitioner has met his burden of proof under the regulation, which the Respondent does not dispute. Scaccia, on the other hand, has not met his burden in that he

has not alleged, let alone demonstrated that more than three years before the OTSC was issued, the relevant events were either a matter of general knowledge in the community, or the subject of a complaint to the Ethics Commission, the Department of the Attorney General, the appropriate Office of the District Attorney or Scaccia's own agency, the House of Representatives. Nor has Scaccia shown that any other disinterested person "capable of acting" on the matter knew or should have known of the alleged wrongful conduct. Scaccia's statute of limitations defense, therefore, fails.

B. Section 3(b)

Section 3(b) of G.L. c. 268A provides: "Whoever, being a present or former state, county or municipal employee or member of the judiciary, or person selected to be such an employee or member of the judiciary, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of substantial value for himself for or because of any official act or act within his official responsibility performed or to be performed by him" violates §3.

Section 3(b) establishes a gratuity offense. As the word "gratuity" implies, §3(b) proscribes the receipt of an item of "substantial value" (the "gratuity") even if the gratuity is intended only to "reward" the public official for actions he has already taken or which he may take in the future. For this reason, there need not be evidence of corrupt intent in an employee's conduct or an understood *quid pro quo* between the receipt of a thing of substantial value and the performance of official acts. "The official act might otherwise be properly motivated; and the gratuity, though unlawful, might not be intended to influence the official's mindset with regard to that particular action." *United States v. Sawyer*, 85 F.3d 713, 730 (1st Cir. 1996). Instead, it is enough that the public official received something of substantial value for or because of an official act performed or to be performed by him. See *In re Antonelli*, 1982 SEC 101, 108; *Commonwealth v. Dutney*, 4 Mass. App. Ct. 363, 375 (1976).^{27/} As we have previously emphasized, to interpret §3 otherwise would subject public employees to a host of temptations which would undermine the impartial performance of their public duties, and permit multiple remuneration for doing what public employees are already obliged to do - a good job. Thus, our interpretation of §3 fosters public credibility in government institutions by imposing on public employees constraints which are conducive to the reasoned, impartial performance of public functions.

In addition, the Commission has set \$50 as the threshold at which it will consider gifts, meals or other benefits to be of "substantial value" for purposes of §3. See *EC-COI-93-14* ("We believe that the \$50 threshold serves the public interest in maintaining the integrity of the government decision-making process, and provides a realistic and workable measure which public officials may use to guide their conduct.").

1. Theodore Lattanzio

The Petitioner alleges that Scaccia violated §3(b) when he accepted from Lattanzio on July 29 and 30, 1991 gratuities worth \$50 or more for or because of official acts or acts within Scaccia's official responsibility performed or to be performed by him.

The evidence indicates that on July 29, 1991, Scaccia, his wife and his son had dinner with Lattanzio and others, while the Scaccias were in Hauppauge, New York attending the CSG conference. The July 29 dinner was not part of the CSG conference agenda. Indeed, the guests at the July 29 dinner were but a small subset of the CSG conference participants. Besides the Scaccias, the dinner guests included legislators from New Hampshire and representatives of Philip Morris — Lattanzio's employer^{28/} — or companies in which Philip Morris holds interests (e.g., Miller Brewing Company). Specifically, for Philip Morris, the dinner guests included Lattanzio, William Delaney, Sr., Philip Morris' outside counsel and principal of Delaney Associates (Philip Morris' lobbyists in Massachusetts), and Miller Brewing Company lobbyists Anne Keaney and Trish McCarthy. The Philip Morris representatives, including Lattanzio, were responsible for Philip Morris' lobbying activities in Massachusetts and New Hampshire as well as the other New England States. Additionally, legislators from Massachusetts and New Hampshire (and their families) attended this dinner. There is no evidence in the record that Scaccia paid for this dinner for himself or his family. Rather, the record discloses that the July 29 dinner was paid for by Lattanzio, who was reimbursed for this expense by Philip Morris. Moreover, from the foregoing, a reasonable inference may be drawn that Scaccia was aware that a representative of Philip Morris paid for his meal and those of his wife and son.^{29/}

The evidence also indicates that Lattanzio invited a group of people to play golf on July 30, 1991. Lattanzio, himself, handed out golf cart keys to the July 30 golf participants. Scaccia and his son, Michael, were among the 19 people who golfed as part of Lattanzio's group that day. Besides Scaccia and his son, the July 30 golfers included five tobacco industry lobbyists (three of whom were from Philip Morris), ten individuals who were legislators or family members of legislators and two lobbyists for non-tobacco Massachusetts business interests. Five of the nineteen people who golfed on July 30 (including Scaccia and his son) had attended the July 29 dinner. As with the dinner the night before, the July 30 golf was not part of the CSG conference agenda. There is no evidence in the record that Scaccia paid for his own golf or that of his son on July 30. Rather, according to the record, Lattanzio paid for the July 30 golf, for which he was reimbursed by Philip Morris. Moreover, where Lattanzio extended the golf invitation, personally handed out the keys to the golf carts, and the Scaccias had dined with Lattanzio and the other Philip Morris representatives the night before, the Commission reasonably infers that Scaccia was aware that Lattanzio paid for his and his son's golf on July 30, 1991.

The record also contains substantial evidence of Scaccia's official acts or acts within his official responsibility that he performed with regard to Philip Morris' interests. Both before and after the July 29 dinner and July 30 golf, legislation was pending before the Massachusetts legislature of interest to Philip Morris, including various pieces of tax legislation before the Taxation Committee chaired by Scaccia. Scaccia acted officially with regard to this legislation both before and after the July 29 dinner and July 30 golf, including holding hearings and voting on this legislation.

The July 29 dinner, as well as the July 30 golf for Scaccia and his family members, respectively, cost \$50 or more and, thus, were "of substantial value" for purposes of §3. See Findings of Fact ("Findings"), §§19, 22.

Finally, Scaccia's receipt of the July 29 dinner and July 30 golf for himself and his family members was not provided for by law for the proper discharge of his official duties. Moreover, Scaccia and Lattanzio are not personal friends and, therefore, friendship could not have been the motive for receipt of the gratuities.

In addition to the foregoing evidence establishing a violation of §3(b), we draw an adverse inference against Scaccia as to his awareness that gratuities given to him by Lattanzio were "for or because of" any official act or act within his official responsibility performed or to be performed by him based on his invocation of his privilege against self-incrimination. See *Labor Relations Commission v. Fall River Educators' Association*, 382 Mass. 465, 471-472 (1981) (refusal to testify on a subject peculiarly within the knowledge of witness warranted an inference in civil action that was adverse to party).

Consequently, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that on July 29 and 30, 1991, Scaccia received gratuities of substantial value from Lattanzio, for or because of official acts or acts within his official responsibility that Scaccia performed, in violation of §3(b).

2. F. William Sawyer

The Petitioner alleges that Scaccia violated §3(b) when he accepted from Sawyer on March 11 and 12, 1993 gratuities worth \$50 or more for or because of official acts or acts within his official responsibility performed or to be performed by him.

The evidence indicates that on March 11, 1993, Scaccia played golf in a foursome with Sawyer at Amelia Island Golf Links, while Scaccia was attending a NCOIL conference at the Amelia Island Plantation Resort in Amelia Island, Florida. The March 11 golf outing was not part of the NCOIL conference agenda.^{30/} Playing golf with Sawyer and Scaccia were Massachusetts State Representatives T. Walsh and Cass. Walsh was invited by Sawyer to play golf on March 11. Walsh and Cass each testified that they did not pay for the March 11 golf outing.

On March 12, 1993, Sawyer drove Scaccia, his son, Michael, and Cass to TPC Sawgrass at Ponte Vedra Beach, Florida. The March 12 golf outing was not part of the NCOIL conference agenda. Scaccia played golf with Sawyer and Honan as a threesome. Scaccia and Sawyer shared a golf cart. Honan testified that he did not pay for his own golf or anyone else's. Scaccia's son, Michael, golfed with Cass.

In 1993, Sawyer was employed by Hancock as a registered legislative agent in Massachusetts. At that time, Scaccia knew Sawyer. Moreover, the record permits the reasonable inference that Scaccia knew Sawyer to be a legislative agent for Hancock where all of the legislators who testified stated that they were aware that Sawyer was so employed, and DiMasi testified that he had an indication that Scaccia knew Sawyer worked for Hancock because of Sawyer's appearances at the State House.^{31/} The record does not indicate that Scaccia paid for his own golf on either March 11 or 12. Rather, the record demonstrates that the March 11 and 12 golf was paid for by Sawyer, who was reimbursed for this expense by his employer, Hancock. From the foregoing evidence, a reasonable inference may be drawn that Scaccia was aware that Sawyer paid for his golf on March 11 and 12, 1993.

The record also contains substantial evidence of Scaccia's official acts or acts within his official responsibility performed by him with regard to Hancock's interests. Both before and after the March 11 and 12 golf, tax legislation of interest to Hancock was pending before Scaccia's Committee. Scaccia acted officially regarding this legislation after the March 11 and 12 golf, including holding Committee hearings on such legislation. Additionally, during 1993, Scaccia, himself, sponsored and filed several bills affecting the insurance industry.

Both the March 11 and March 12 golf cost \$50 or more and, thus, were "of substantial value" for purposes of §3. See Findings, &&29, 33.

Finally, Scaccia's receipt of the March 11 and 12 golf is not provided for by law for the proper discharge of his official duties. Moreover, Scaccia and Sawyer are not personal friends and, therefore, friendship could not have been the motive for receipt of the gratuities.

In addition to the foregoing evidence establishing a violation of §3(b), we draw an adverse inference against Scaccia as to his awareness that gratuities given to him by Sawyer were "for or because of" any official act or act within his official responsibility performed or to be performed by him based on his invocation of his privilege against self-incrimination.

Consequently, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that on March 11 and 12, 1993, Scaccia received gratuities of substantial value from Sawyer, for or because of official acts or acts within his official responsibility that Scaccia performed, in violation of §3(b).

3. William Carroll

The Petitioner alleges that Scaccia violated §3(b) when he accepted from Carroll on March 12, 1993 a gratuity worth \$50 or more for or because of official acts or acts within his official responsibility performed or to be performed by him.

The evidence indicates that on March 12, 1993, Scaccia and his son had dinner with Carroll at the Ritz Carlton Hotel while Scaccia was attending the NCOIL conference. The March 12 dinner was not part of the NCOIL conference agenda. Attending the March 12 dinner in addition to Scaccia and his son were twenty-two individuals, all of whom were either Massachusetts legislators (or their guests) or representatives of businesses with an interest in Massachusetts insurance legislation. There is no evidence in the record that Scaccia paid for his or his son's meals on March 12. Rather, the record discloses that the March 12 dinner was paid for by Carroll and that LIAM reimbursed Carroll for the dinner as a business expense. Moreover, Scaccia, through his counsel, admits that he was informed that Carroll was a sponsor of the March 12 dinner. (Exhibit P-77). Therefore, it is reasonable to conclude that Scaccia was aware that his meal and that of his son during the March 12 dinner was paid for, at least in part, by Carroll, whom Scaccia knew to be a legislative agent.

There is also substantial evidence of Scaccia's official acts or acts within his official responsibility performed by him with regard to LIAM's interests. Both before and after the March 12 dinner, there was legislation pending before the Committee of interest to LIAM's members (including Hancock, as explained above). Scaccia acted officially regarding such legislation after the March 12 dinner. Additionally, during 1993, Scaccia, himself, sponsored and filed several bills affecting the insurance industry.

The cost of the March 12 dinner for Scaccia and his son, respectively, was \$50 or more and, thus, was "of substantial value" for purposes of §3.^{32/} See Findings, &42.

Finally, Scaccia's receipt of the March 12 dinner is not provided for by law for the proper discharge of his official duties. Moreover, Scaccia and Carroll are not personal friends and, therefore friendship could not have been the motive for receipt of the gratuities.

In addition to the foregoing evidence establishing a violation of §3(b), we draw an adverse inference against Scaccia as to his awareness that gratuities given to him by Carroll were "for or because of" any official act or act within his official responsibility performed or to be performed by him based on his invocation of his privilege against self-incrimination.

Consequently, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that on March 12, 1993, Scaccia received a gratuity of substantial value from Carroll, for or because of official acts or acts within his official responsibility that Scaccia performed, in violation of §3.

4. Richard McDonough

The Petitioner alleges that Scaccia violated §3(b) when he accepted from McDonough on March 11, 1993, a gratuity worth \$50 or more for or because of official acts or acts within his official responsibility performed or to be performed by him.

The evidence indicates that on March 11, 1993, Scaccia and his son, Michael, had dinner with McDonough and others at the Amelia Inn restaurant, while Scaccia was attending the NCOIL conference at the Amelia Island Plantation Resort. DiMasi, a close personal friend of Scaccia, also attended the March 11 dinner. See Findings, &51. Before his early departure from the dinner, McDonough, unbeknownst to DiMasi, arranged for the dinner to be put on his (McDonough's) room tab.^{33/} Consequently no check was ever brought to the guests at the March 11 dinner. After inquiring of the waiter, DiMasi learned that McDonough had arranged for payment of the dinner. Although DiMasi thereafter apprised Scaccia of McDonough's handling of the bill for the March 11 dinner, DiMasi also assured Scaccia that he would "take care of it". See Findings, &53. From the foregoing, we find that Scaccia, relying on the assurance of his close personal friend DiMasi, reasonably could have concluded that he was receiving for himself and his son, a meal that would be paid for by DiMasi rather than McDonough.

Accordingly, we conclude that the Petitioner has failed to prove by a preponderance of the evidence that on March 11, 1993, Scaccia received a gratuity from McDonough for or because of official acts or acts within his official responsibility performed or to be performed by him.^{34/}

C. Section 23(b)(3)

Section 23(b)(3) of the conflict of interest law, the standards of conduct section, provides that

[n]o current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know . . .

(3) act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

As the Commission has recently stated, "[s]ection 23(b)(3) is concerned with the appearance of a conflict of interest as viewed by the reasonable person, not whether the Respondent actually gave preferential treatment. The Legislature, in passing this standard of conduct, focused on the perceptions of the citizens of the community, not the perceptions of the players in the situation." *In re Hebert*, 1996 SEC 800. In a recent case, the Commission indicated that in applying §23(b)(3) to a public employee, it will evaluate whether, "due to his private relationship or interest, an appearance arises that the integrity of the public official's action might be undermined by the relationship or interest." *In re Flanagan*, 1996 SEC 757. See also *In re Antonelli*, 1982 SEC 101, 110 (evaluating precursor of §23(b)(3), Commission indicated major purpose of section to prohibit public employee from engaging in conduct which will raise questions over impartiality or credibility of his work). We emphasize that public

disclosure of the facts which would otherwise lead to the conclusion that a public employee's integrity has been undermined serves an important public interest. In addition, the §23(b)(3) disclosure provision affords a simple mechanism by which public employees may avoid violations of §23(b)(3).

1. Lattanzio

The evidence indicates that subsequent to July 30, 1991, Scaccia acted officially as a state representative concerning legislation relating to the taxation of tobacco products. We find that by accepting dinner and golf (for himself and his family) from Lattanzio (a legislative agent for Philip Morris) and thereafter taking official actions affecting the interests of Philip Morris, Scaccia, "knowingly or with reason to know," acted in a manner which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that Philip Morris could likely enjoy his favor in the performance of his official duties or that Scaccia would likely act or fail to act as a result of Lattanzio's undue influence. Consequently, where the record contains no evidence that Scaccia publicly disclosed his July 29 and 30 receipt of dinner and golf prior to taking official actions affecting the interests of Philip Morris, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that Scaccia violated §23(b)(3).

2. Sawyer and Carroll

The evidence indicates that subsequent to March 11 and 12, 1993, Scaccia acted officially as a state representative concerning legislation relating to the insurance industry. We find that by accepting golf from Sawyer (a legislative agent for Hancock) and dinners from Carroll (a legislative agent for LIAM) and thereafter taking official actions affecting the interests of Hancock and LIAM, Scaccia, "knowingly or with reason to know," acted in a manner which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that Hancock and LIAM could likely enjoy his favor in the performance of his official duties or that Scaccia would likely act or fail to act as a result of Sawyer or Carroll's undue influence. Consequently, where the record contains no evidence that Scaccia publicly disclosed his March 11 and 12 receipt of golf and a dinner prior to taking official actions affecting the interests of Hancock and LIAM, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that Scaccia violated §23(b)(3).

3. McDonough

As stated earlier, we find that Scaccia reasonably could have concluded that he received the March 11 dinner from his personal friend, DiMasi, rather than McDonough. Accordingly, we find that the Petitioner failed to establish that Scaccia "knowingly or with reason to know," (subsequent to his acceptance of the March 11 dinner) acted in a manner which would cause a reasonable person, with knowledge of the relevant circumstances to conclude that Anheuser-Busch (or the other organizations represented by McDonough) could likely enjoy his favor in the performance of his official duties or that Scaccia would likely act or fail to act as a result of McDonough's undue influence. Consequently, we conclude that the Petitioner has not demonstrated by a preponderance of the evidence that Scaccia violated §23(b)(3) in this instance.

D. G.L. c. 268B, Section 6

Section 6 of G.L. c. 268B provides, in relevant part: [N]o public official or public employee or member of such person's immediate family shall knowingly and wilfully solicit or accept from any legislative agent, gifts^{35/} with an aggregate value of one hundred dollars or more in a calendar year.

The record demonstrates that Lattanzio was a registered legislative agent for Philip Morris in 1991 and that Sawyer and Carroll were registered legislative agents for Hancock and LIAM, respectively, in 1993. In addition, we have drawn the reasonable inference, in the case of Lattanzio and Sawyer, and the record itself demonstrates, in the case of Carroll, that Scaccia knew Lattanzio, Sawyer and Carroll each to be a legislative agent and that Scaccia was aware of his receipt of gratuities from each of these legislative agents. We also have found the value of the gratuities which Scaccia received from each of these legislative agents to be \$100 or more. Accordingly, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that Scaccia violated G.L. c. 268B, §6.

E. G.L. c. 268B, Section 7

Section 7 of G.L. c. 268B provides for civil and criminal penalties for “any person who wilfully affirms or swears falsely in regard to any material matter before a commission proceeding under paragraph (c) of section 4 of this chapter, *or who files a false statement of financial interests under section 5 of this chapter . . .*” (emphasis added). G.L. c. 268B, §5(g) states, in relevant part, that “reporting persons shall disclose, to the best of their knowledge . . . the name and address of the donor, and the fair market value, if determinable, of any gifts aggregating more than one hundred dollars in the calendar year, if the recipient is a public official and the source of the gift(s) is a person having a direct interest in legislation . . .”

The Petitioner has alleged that Scaccia violated G.L. c. 268B, §7 by filing his 1991 and 1993 SFI’s without disclosing his receipt in calendar year 1991 of gratuities provided by Lattanzio aggregating more than \$100 and in calendar year 1993, of gratuities provided by both Carroll and Sawyer aggregating more than \$100. According to the Petitioner, Scaccia thereby twice filed false SFI’s.

As detailed above, the record indicates that in March of 1991 Scaccia received gratuities from Lattanzio aggregating more than \$100 and that the source of such gifts was Philip Morris, a company with an interest in legislation before the Massachusetts House of Representatives in 1991. The record also shows that in July of 1993, Scaccia received gratuities from Sawyer and Carroll, which in each case aggregated to over \$100. The source of such gifts respectively was Hancock and LIAM, both of which are organizations which had an interest in legislation before the Massachusetts House of Representatives in 1993. Additionally, we have drawn reasonable inferences as to Scaccia’s awareness that he was receiving gratuities from Lattanzio, Sawyer and Carroll and their positions as legislative agents.

Scaccia has admitted that he is a state representative. As such, he is required to file a yearly statement of financial interest. G.L. c. 268B, §5(b). Scaccia concedes, without admitting that he received any of the aforementioned gratuities, that he failed to disclose these gratuities on his 1991 and 1993 SFI’s. (Respondent’s Brief at 67).

Accordingly, we find that the Petitioner has demonstrated by a preponderance of the evidence that Scaccia filed false SFI’s for calendar years 1991 and 1993 in violation of G.L. c. 268B, §7.

IV. Conclusion

In conclusion, the Petitioner has proved by a preponderance of the evidence that Angelo Scaccia violated G.L. c. 268A, §3(b) on five occasions by accepting: a meal and golf from Theodore Lattanzio; golf on two occasions from F. William Sawyer; and a meal from William Carroll. The Petitioner has also proved by a preponderance of the evidence that Angelo Scaccia violated G.L. c. 268A, §23(b)(3) with respect to the above-described gratuities. Additionally, the Petitioner has proved by a preponderance of the evidence that Angelo Scaccia violated G.L. c. 268B, §6 by accepting from Theodore Lattanzio, F. William Sawyer and William Carroll gifts aggregating \$100.00 or more in a calendar year. Finally, the Petitioner has proved by a preponderance of the evidence that Angelo Scaccia violated G.L. c. 268B, §7 on two occasions through his filing of false Statements of Financial Interests for calendar years 1991 and 1993.

We conclude that the Petitioner has not proved by a preponderance of the evidence that Angelo Scaccia violated G.L. c. 268A, §’3(b) or 23(b)(3) in relation to Richard McDonough.

V. Order

Pursuant to the authority granted it by G.L. c. 268B, §4(j), the Commission hereby orders Angelo Scaccia to pay the following civil penalty for violating G.L. c. 268A, §’3(b) and 23(b)(3) and G.L. c. 268B, §’6 and 7. We order Angelo Scaccia to pay \$3,000.00 (three thousand dollars) to the State Ethics Commission within thirty days of his receipt of this Decision and Order.

DATE: November 19, 1996

¹Commissioner Paul F. McDonough, Jr. has abstained from participation in the adjudication of this matter.

²⁷“Gratuities” is used to refer to things of substantial value.

³Additionally, Sandra Scaccia (Scaccia’s wife), Richard McDonough, and William Sawyer invoked their privileges against self-incrimination.

⁴Commissioner Burnes is not a signatory to this Decision and Order because her resignation became effective prior to its issuance. She did, however, fully participate in the Commission’s deliberations and decision in this matter.

⁵We credit the Amelia Island Plantation, Amelia Golf Links business record signed by Michael Scaccia which reflects expenses incurred on March 10, 1993. Additionally, because statements contained in the Affidavit of Michael Scaccia dated October 30, 1995 are contradicted by the testimony of live witnesses, who were subject to cross-examination, and properly authenticated business records admitted at the hearing, we do not credit the Affidavit.

⁶We credit Lattanzio’s business records.

⁷We credit Lattanzio’s business records.

⁸We credit Lattanzio’s business records.

⁹We credit Lattanzio’s testimony and business records.

¹⁰We credit the Amelia Island Plantation Guest Folio business record reflecting the expenses incurred by Sawyer on March 11, 1993.

¹¹We credit the testimony of Bruce Skrine, Corporate Secretary and keeper of the records for Hancock.

¹²We credit the business record of Sawgrass TPC Golf Course relating to the expenses incurred by Sawyer on March 12, 1993.

¹³We credit the testimony of Bruce Skrine, Corporate Secretary and keeper of the records for Hancock.

¹⁴We credit Carroll’s testimony that an individual identified to him as Michael Scaccia was an attendee at the March 12, 1993 dinner at the Ritz. As stated above, we do not credit the Affidavit of Michael Scaccia dated October 30, 1995.

¹⁵We credit the business record (Guest Check No. 6430) from the Ritz-Carlton restaurant, The Grill, dated March 12, 1993.

¹⁶We credit Carroll’s testimony on this point.

¹⁷We credit the admission of Scaccia’s counsel contained in his June 8, 1994 letter to the Petitioner.

¹⁸We credit Cass’ testimony concerning Michael Scaccia’s attendance at the March 11, 1993 dinner. As stated above, we do not credit the Affidavit of Michael Scaccia dated October 30, 1995.

¹⁹We credit DiMasi’s testimony on this point.

²⁰We credit DiMasi’s testimony for this finding.

²¹In his Proposed Findings and Rulings, the Respondent admits this fact. *See* &44.

²²We credit the Amelia Island Plantation Guest Folio business record (and attached guest check, reference no. 74796) reflecting the dinner expenses incurred by McDonough on March 11, 1993. The total amount relied upon for this finding does not include the beverage expenses incurred by McDonough on March 11, 1993 as reflected in the business record (and attached guest check, reference no 21411).

²³“State employee,” a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis, including members of the general court and executive council. G.L. c. 268A, §1(q).

²⁴*See* G.L. c. 268A, §1(q)

²⁵Scaccia does not raise a statute of limitation defense in relation to the alleged gratuities given at the 1993 Amelia Island conference.

²⁶The Commission first adopted a three-year statute of limitations in an adjudicatory decision, *In re Saccone*, 1982 SEC 87, 93-94 (*rev’d* on other grounds, 395 Mass. 326 (1985)). In that decision, the Commission expressly adopted the reasoning of *Nantucket v. Beinecke*, 379 Mass. 345 (1979), in which the Court held that the essence of a legal action under G.L. c. 268A, §21, brought by Nantucket to void a deed tainted by the conflict of interest of certain Town employees, sounded in tort, as a violation of official duty. *Id.* at 348-349. The Supreme Judicial Court also determined that the trial judge was correct in deciding that “the statute [of limitations] commences to run when the plaintiff knew or should have known of the wrong.” *Id.* at 350. In discussing the circumstances under which the Town would be charged with notice for purposes of the running of the statute of limitations, and the Court stated “as a general proposition, that only when those disinterested persons who are capable of acting on behalf of the town knew or should have known of the wrong, should the town be charged with such knowledge.” *Id.* at 351. Sometime between 1982 and 1984, the Commission’s statute of limitations was codified in 930 CMR § 1.02(10). In *Zora v. State Ethics Commission*, 415 Mass. 640, 647-648 (1993), the Supreme Judicial Court, affirming its reasoning in

Beinecke, held that a three-year statute of limitations applies to proceedings under G.L. c. 268A.

²⁷In contrast, no §3 violation occurs where the public employee has a prior friendship with the donor and the evidence establishes that the friendship is the motive for the receipt of the gratuity. See *In re Hebert*, 1996 SEC 800. Scaccia has not alleged a friendship with the donors in this case, nor would the evidence support such a finding.

²⁸In 1991, Lattanzio was employed by Philip Morris as a registered legislative agent in Massachusetts. From the record, it is reasonable to infer that in 1991 Scaccia knew Lattanzio to be a legislative agent for Philip Morris based on that fact that Lattanzio had previously met Scaccia at the 1990 Eastern Regional Conference in Manchester, New Hampshire. In 1990 Lattanzio was serving as Philip Morris' Regional Director for the New England Region, a position in which he monitored legislation in the six New England states relative to Philip Morris' interests. The record reflects that Lattanzio incurred a business expense relating to Scaccia at that time. Additionally, we draw an adverse inference against Scaccia regarding his knowledge of Lattanzio as a legislative agent for Philip Morris based on his invocation of his privilege against self-incrimination. See *Quintal v. Commissioner of the Department of Employment & Training*, 418 Mass. 855, 861 (1994) (in a civil action, a reasonable inference adverse to a party may be drawn from the refusal of that party to testify on the grounds of self-incrimination).

²⁹Indeed, Scaccia's counsel admitted during his closing argument before the Ethics Commission that such an inference would be reasonable. (Closing Transcript at 41).

³⁰Indeed, the conference did not begin until March 12, 1993 and no golf was scheduled as part of the conference.

³¹Additionally, we draw an adverse inference against Scaccia regarding his knowledge of Sawyer as a legislative agent based on his invocation of his privilege against self-incrimination.

³²The record contains evidence that, subsequent to his return to Boston, Carroll sought and received contributions of \$500 and \$600 from Francis Carroll (of the Small Business Service Bureau, Inc.) and insurance company lobbyist Arthur Lewis, respectively, toward the cost of the March 12 dinner. However, the record lacks evidence that a third lobbyist, who had previously expressed an interest in contributing to the cost of the March 12 dinner, provided Carroll with any contribution. The happenstance that some contributions were later made does not alter our conclusion that on March 12, 1993, Scaccia received from Carroll a gratuity of substantial value.

³³Scaccia admits that the March 11 dinner was paid for by McDonough. See Findings, &53, n. 15.

³⁴We need not reach the issue of whether the meals accepted by Scaccia on March 11, 1993 for himself and his son were of substantial value.

³⁵"Gift" means a payment, entertainment, subscription, advance, services or anything of value, unless consideration of equal or greater value is received; . . . G.L. c. 268B, §1(g).